IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2449 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SUNDERLAL B SONI

Versus

STATE OF GUJARAT

Appearance:

MR GIRISH M DAS for Petitioner

M/S PATEL ADVOCATES for Respondent No. 1

RULE SERVED for Respondent No. 3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 27/04/2000

ORAL JUDGEMENT

Rule. Mr.V.B.Gharaniya has waives service of rule. In the facts and circumstances of the case, the petition is taken up for final hearing today itself.

Learned Advocate Girish M. Das is appearing on behalf of petitioner. Learned A.G.P. Mr. V.B.Gharaniya is appearing on behalf of the respondents. In the present petition, the order passed by the Assistant Commissioner of Labour dated 5th Febuary, 1999 Annexure K (page 49) is challenged by the petitioner. In the said order, the Assistant Commissioner of Labour, Nadiad has rejected the request of petitioner to refer the industrial dispute to the Labour Court against the dismissal order of 11th January, 1989.

The facts of the present petition is that the petitioner was previously terminated by the employer on 4th June, 1987. Against the first termination the petitioner had approached the Assistant Commissioner of Labour filing complaint dated 19th January, 1988 which ultimately referred the dispute for adjudication for Labour Court, Nadiad by order dated 27th September, 1988. The said reference has been registered before the Labour Court, Nadiad being reference No. 430 of 1988 by order dated 9th October, 1988. The said reference is pending before the Labour Court, Nadiad. Thereafter, the employer has initiated inquiry against the petitioner by issuing notice dated 26th October, 1988 and thereafter, the departmental inquiry has been completed on 3rd November, 1988 and show-cause-notice dated 28th December, 1988 served to the petitioner was discharged from service by the employer. Therefore, against the second discharge or termination, the petitioner workman has raised industrial dispute by filing complaint under Section 2-A on 24th December, 1998 before the Assistant Commissioner of Labour at Nadiad challenging the termination or discharged order on 11th January, 1989. After receiving the said complaint from the petitioner, the Assistant Commissioner of Labour at Nadiad has decided not to refer the industrial dispute on the ground that, earlier reference No. 430 of 1988 new No. 489 of 1992 is pending for the relief of reinstatement of the petitioner and therefore, it is not necessary to refer this dispute in this respect to second termination or discharge order. The said order dated 5th February, 1999 passed by Assistant Commissioner of Labour is under challenged.

I have heard both the learned advocates. The Assistant Commissioner of Labour at Nadiad has apparently committed error in not referring the industrial dispute to the Labour Court, Nadiad in respect to second termination of the petitioner dated 11th January, 1989 on the ground that earlier reference in respect to the termination dated 4th June, 1987 which referred the industrial dispute for adjudication to the Labour Court,

Nadiad being reference No. 430 of 1988 new No. is 489 of 1992. The said reasons are erroneous and they are based on misconception of statutory provisions. It is undisputed fact that service of petitioner was terminated by the employer on two occasions on two different reasons. One termination dated 4th June, 1987 was simple termination and second termination dated 11th January, 1989 was based on charge sheet and a result of inquiry. Therefore, petitioner is entitled to challenge both the termination orders independently separately and Labour Court can not decide, the validity and legality of second termination in pending reference No.430 of 1988 new No. is 489 of 1992 which relate to termination of petitioner dated 4th June, 1987. It is settled law that, Labour Court can not go beyond terms of reference. The provision of Section 10(1) is very clear which give powers to the Labour Court to adjudicate the industrial dispute which referred for adjudication. The Labour Court have powers to decide the incidental matter to the main dispute but, second termination which is independent and different cause of action can not be considered to be incidental matter of main dispute relating to earlier termination. Therefore, in such a situation considering the provisions of Section 10 and power of Labour Court in pending reference, the Labour Court can not examine or adjudicate the legality and validity of second termination order dated 11th January, 1989. Therefore, the Assistant Commissioner of Labour, Nadiad has committed gross error in not referring the industrial dispute relating to the second termination dated 11th January, 1989 on the ground pending reference No.489 of 1992. It is a basic apparent error and the said view is contrary to the scheme of the Industrial Disputes Act, 1947 and it is also contrary to the provisions of Section 10 of Industrial Disputes Act, 1947. Therefore, the Assistant Commissioner of Labour, Nadiad has committed gross error in coming to such conclusion by order dated 5th February, 1999 which is required to be quashed and set aside. Therefore, the order passed by the Assistant Commissioner of Labour, Nadiad dated 5th February, 1999 Annexure K page 49 is hereby quashed and set aside and it is directed to the Assistant Commissioner of Labour, Nadiad to refer the industrial dispute raised by the petitioner against the second termination dated 11th January, 1989 by filing complaint under Section 2-A of Industrial Disputes Act, 1947 dated 24th December, 1998 to the Labour Court, Anand within a period of one month from the date of receiving the writ of this order from this Court.

In view of this fact, the present petition is

allowed. Rule is made absolute. No order as to costs. Office is directed to sent immediately writ of this order to the respondent No.3 Assistant Commissioner of Labour, Nadiad.

Date:-27/04/2000. (H.K.RATHOD,J)

yhd.